

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 MICHAEL D. EALY,

4 Plaintiff

Case No. 2:21-cv-00425-RFB-NJK

ORDER

5 v.

6 STATE OF NEVADA,

7 Defendant
8

9 On March 17, 2021, this Court issued an order directing Plaintiff to file a fully
10 complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or
11 before May 17, 2021. (ECF No. 3). On March 23, 2021, the Court received a returned
12 mail receipt indicating the Court's Advisory Letter (ECF No. 2) was undeliverable. (ECF
13 No. 4). Thereafter, on April 1, 2021, the Court received another return mail receipt
14 indicating the Court's March 17, 2021 order (ECF No. 3) was undeliverable. (ECF No. 5).
15 The May 17, 2021 deadline has now expired, and Plaintiff has not filed a fully complete
16 application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise
17 responded to the Court's order.

18 District courts have the inherent power to control their dockets and "[i]n the
19 exercise of that power, they may impose sanctions including, where appropriate . . .
20 dismissal" of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831
21 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
22 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
23 See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
24 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
25 1992) (affirming dismissal for failure to comply with an order requiring amendment of
26 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
27 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
28 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming

1 dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
2 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
3 local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 See Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at
10 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
15 in filing a pleading ordered by the court or prosecuting an action. See Anderson v. Air
16 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
17 disposition of cases on their merits—is greatly outweighed by the factors in favor of
18 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
19 the court's order will result in dismissal satisfies the "consideration of alternatives"
20 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779
21 F.2d at 1424. The Court's order requiring Plaintiff to file a fully complete application to
22 proceed *in forma pauperis* or pay the full \$402 filing fee on or before May 17, 2021
23 expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff does not file a fully
24 complete application to proceed *in forma pauperis* with all three documents or pay the full
25 \$402 filing fee for a civil action on or before May 17, 2021, this case will be subject to
26 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case
27 number, when Plaintiff is has all three documents needed to file a complete application
28 to proceed *in forma pauperis* or pays the the full \$402 filing fee." (ECF No. 3 at 3). Thus,

1 Plaintiff had adequate warning that dismissal would result from noncompliance with the
2 Court's order to file a fully complete application to proceed *in forma pauperis* or pay the
3 full \$402 filing fee on or before May 17, 2021.

4 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
5 based on Plaintiff's failure to file a fully complete application to proceed *in forma pauperis*
6 or pay the full \$402 filing fee in compliance with this Court's order dated March 17, 2021.
7 (ECF No. 3).

8 IT IS FURTHER ORDERED that the Plaintiff may move to reopen this case and
9 vacate the judgment by filing a motion for reconsideration of this order. In this motion, the
10 Plaintiff would need to explain that circumstances which led to him not being able to
11 update his address as directed by the Court. If the Court finds there is good cause or a
12 reasonable explanation for the failure to update the address, the Court will reopen the
13 case and vacate the judgment.

14 IT IS FURTHER ORDERED that the Clerk of Court will close the case and enter
15 judgment accordingly. No other documents may be filed in this now-closed case.

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19 DATED: May 26, 2021.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE